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October 29, 2007

Representative Jim Kreuser  
PO Box 8952  
Madison, WI. 53708-8952

RE: Support of AB 431

Dear Representative Kreuser:

I am faxing this letter to you in hopes that you can present it for me at the public hearings tomorrow on AB 431.

This bill could represent an important breakthrough for victim's rights. It would help avoid re-victimizing many victims by limiting the number of times they have to tell their story over & over again. This is especially helpful to children and would ameliorate the trauma they experience in the criminal justice system.

Revocation hearings are typically a brutal experience for victims. They are held in a room that's approximately 4 feet by 4 feet, where the offender and the victim sit at a table together within 2 feet of each other. It is terrifying for victims. When a victim testifies at a preliminary hearing, in a regular courtroom, the burden of proof is "probable cause". If probable cause is found by the circuit court judge, a defendant is "bound over", for trial. If a state court is able to establish this burden of proof, I believe it should be sufficiently reliable and trustworthy for the department of corrections to rely on in their revocation hearings.

I strongly urge you to nurture and promote this bill. It is moral and ethical and only tries to balance the scales for the victims. Thank you for your time and consideration  
Respectfully,

Sandra J. Bertelle  
Victim/Witness Coordinator  
Kenosha County

**Sklansky, Ron**

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**From:** Peterson, Eric  
**Sent:** Tuesday, March 11, 2008 4:14 PM  
**To:** Sklansky, Ron  
**Subject:** FW: AB 431 information from SPD

***Eric M. Peterson***

Office of Senator Lena C. Taylor  
608-266-5810

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**From:** Ginger, Krista [mailto:GingerK@opd.wi.gov]  
**Sent:** Tuesday, March 11, 2008 2:05 PM  
**To:** Peterson, Eric  
**Subject:** AB 431 information from SPD

From SPD Trial Division Director, Mike Tobin:

1. Bill could increase litigation and increase requests for alleged victim's presence

Because of penalties for revocation in felonies, we expect challenges on the grounds of unreliability and alleged violations of the right to confrontation. Some challenges may require that the defense attempt to subpoena the alleged victim, argue the issue of good cause, and make an offer of proof. Ironically, the law could result in more attempts to have the alleged victim present than we see under current law.

At the preliminary hearing in the felony case, the defense is usually limited in the scope of cross-examination (cannot cross-examine regarding possible bias and other issues regarding credibility). The defense rarely has received discovery materials or completed its investigation before the preliminary hearing. Thus, the limited cross-examination at the preliminary hearing is not the same as the right to ask about all relevant aspects of the witness' knowledge and credibility at the revocation hearing.

The defense will likely argue in some cases that because of the characteristics of the preliminary hearing, the testimony from that hearing is not sufficiently reliable to support a finding that the alleged crime occurred. If the hearing examiner orders revocation, the defense may pursue an appeal on this ground.

2. Bill addresses a situation that is presently very rare

DOC can already rely upon out-of-court statements of an absent witness (for example, summary from police report). At present, the defense has the potential safeguard of subpoenaing the alleged victim. However, most revocation hearings do not involve a factual dispute regarding whether the defendant (respondent) violated any rules of supervision. Most proceedings involve disputes over the severity of the violations and the feasibility of attempting an alternative to revocation.

For the above reasons, it is very rare for the defense to subpoena the alleged victim (thus, as stated in section 1., the potential legal issues stemming from the bill could lead to increased efforts to subpoena the alleged victim).

3. No need to increase the number of revocations

A substantial percentage of prison admissions result from revocations of supervision (specific data should be available from DOC). Arguably, any changes to the revocation procedures should emphasize alternatives to revocation, rather than streamlining the process to revoke supervision.

From SPD Revo Atty's who all agreed with Mike's comments above but add:

Mary Scholle: There are some due process concerns in my mind. Also some very basic confrontational issues. Most importantly I think are the differences between the purpose of the two hearings and what is at issue. At a prelim probable cause hearing there is limited cross examination. Also the credibility of the witness is not at issue. The decision is subject to court review and the ultimate decision of guilt or innocence is determined at trial. At the revocation hearing the issue of credibility is many times the main issue and the ALJ must have some basis to determine credibility in order to find that the evidence is reliable. The ALJ unlike the court commissioner in prelim is the ultimate trier of fact and therefore must weigh credibility. On the other hand hearsay statements without more are usually not used to revoke. Would this change what the ALJ needs to consider to find evidence reliable. There is written into the law as it now exists the defendant has the right to call witnesses so this would conflict with the law. What would good cause be?

Yvonne Vega noted that frequently the attorney handling the felony is not the same as the one handling the revo. She also said that what might mitigate an offense enough to be a violation but not justify revocation is irrelevant in a preliminary hearing. She thinks that it is very rare that we would be the ones to subpoena the victim.

I hope this helpful! Krista

*Krista Ginger*

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